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Application No. 10/080,767
Amendment Dated December 23, 2004
Reply to Final Rejection of July 26, 2004

REMARKS/ARGUMENTS

By this Amendment, claim 2 is canceled and claims 1, 3-5, 7-8 and 23-24 are amended.

Claims 1 and 3-47 are pending.

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

The Examiner's courtesy in granting an interview to Applicants' representative on December 22, 2004 is gratefully acknowledged. Applicants' separate record of the substance of the interview is incorporated into the following remarks.

As stated in the Office Action at paragraph 10, and acknowledged by Examiner Wilder during the interview, claims 2-3, 6-9, 18-28, 41, 44 and 46 recite allowable subject matter. Accordingly, claim 1 is amended to incorporate the limitations of claim 2, which has been canceled. In addition, the dependencies of claims 3 and 5 have been amended, claim 4 has been rewritten in independent form, and claims 7-8 and 23-24 have been amended for improved clarity.

Rejection under 35 U.S.C. § 112, ¶ 2

Claims 7-8 and 10-17 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. This rejection is respectfully traversed.

(a) Recitation of "free nucleobase" in claims 7 and 8

As explained in the June 17, 2003 Amendment, the phrase "free nucleobase" is used in accordance with its conventional meaning in the art. During the interview, the Examiner

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expressed concern that the term "free" is inconsistent with the blocking agent binding to the probe and/or target. The undersigned explained that the term "free" was intended to refer to the state of the nucleobase prior to performing its blocking agent function. Claims 7 and 8 are amended accordingly for clarification.

Claims 23-24 are amended to remove the term "free", although they were not rejected on the same basis as claims 7-8. The term is superfluous in view of the closed transitional phrase "consists of" defining the blocking agent in these claims.

(b) Recitation of "1-200%" limitation in claims 10-17

In accordance with the agreement reached during the interview, the meaning of the percentage limitations in the phrases at issue is clear when read in view of the teachings in the specification, which were previously cited of record in the March 26, 2004 Amendment at pages 12-14.

Accordingly, reconsideration and withdrawal of the rejection of claims 7-8 and 10-17 as being indefinite are respectfully requested.

Art-Related Rejections

As noted above, claim 1 is amended to incorporate the limitations of claim 2, which was acknowledged by the Examiner to be free of the art. Therefore, claim 1 and all the claims ultimately dependent therefrom are now free of the art for at least the same reasons as previously presented claim 2. As all the dependent claims (other than claim 5, which is discussed below)

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ultimately depend from base claim 1 or 6, which are free of the art, all of the claims are free of the art.

Claim 4 is amended to independent form incorporating the limitations of claim 1 as previously presented. As discussed during the interview, Becker et al., the sole/primary reference applied in all of the pending rejections, does not disclose anything about the length of the oligonucleotides suitable for use as conjugate molecules. The Examiner agreed that references in Becker et al. to modification of 4 or 5 consecutive nucleotides do not mean that the "helper oligonucleotide" (or conjugate oligonucleotide) is 4 or 5 nucleotides in length. Rather, the cited passages at column 8, lines 53-63 and column 21, lines 42-48 refer to nucleotides of the probe having, e.g., modified ribofuranosyl rings. Becker et al. does not describe how long the "helper oligonucleotides" (conjugate oligonucleotide) can be, although it provides examples of 31 to 41 nucleotides in length (column 34, lines 49-51) and incorporates by reference the teachings of Hogan et al., which defines "helper oligonucleotides" as being about 10 to about 50 nucleotides in length. See Becker et al. at column 11, lines 19-23 and Hogan et al. at column 5, lines 27-28 and 64-65.

As the secondary references do not remedy this deficiency of Becker et al., it is respectfully submitted that claim 4 and dependent claim 5 are now in allowable form.

Accordingly, reconsideration and withdrawal of all rejections under 35 U.S.C. §§ 102 and 103 are respectfully requested.

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For at least the reasons set forth above, it is respectfully submitted that the above-identified application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are respectfully requested.

Should the Examiner believe that anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

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December 23, 2004

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